1949. **File No.** O. Sale of Goods/49

Legal Deptt.

(K)

A. BRANCH

Subject:— Opinions under the Indian Sales of Goods Act 1930

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C O N T E N T S.

Legal Department File No. C. Sale of Goods/49.

Sr. No.	R.I. / C. No.	Subject	Pages.
1)	6726 17-6-49	The Indian Sale of Goods Act, 1930 - Sec. 77 - Appli whether the above-Section has any application to claims of Govt. and com-pensation claimed.	
2)	11478 14-10-49	Whether failure to deliver the goods within the stipu-lated time would amount to Breach of Contract.	3 -5

C.G.R. 4-6-

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Office of the R.L.A.

Indian Railways Act
section 77
Application in respect
goods dispatched to
Government.

It is true that it would not be possible for Government to dispute its liability to pay the price of 6 Cattle Clippers to Messrs. Larsen & Toubro, Ltd., Bombay, for not only were the goods quoted ex-godown, but in fact the Livestock Expert to the Government of Bombay has stated in the claim made to the Railway that the goods belonged to Government and he has also authorised Larsen & Toubro Ltd., to put up a claim on his behalf to the Superintendent of Claims, G.I.P. Railway. But while admitting Government's liability to pay the price of the goods to Messrs. Larsen & Toubro Ltd., they may be informed that they will have to compensate Government for the loss occasioned by them by them by failing to up put up the claim to the Superintendent of Claims, G.I.P. Railway in time, for by promising to put up such claim they acted as agents of Government and negligently failed so to do whereby the claim of Government against the Company is rejected by the Railway authorities as time barred.

It may also be brought to the notice of the Railway authorities that section 77 of the Railways act will have no application to claims of Government and consequently, compensation for the loss of goods should be paid to this Government.

sd/- (P.M.L)
U.R. to A.R.D.D. No. 6726 , dated
17th June, 1949.

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Office of the R.L.A.

The stipulation as to the supply of flags at 11 a.m. on the 9th of August 1949 was clearly in this case of the essence of contract. Since the firm failed to deliver the supply within the stipulated time, there was a clear breach of contract, and Government would have been entitled to claim compensation or damages. Strictly speaking, there can be no waiver of the stipulation after breach; but to accept goods though delivered late is often spoken of as a waiver of the condition, but more strictly it is an accord and satisfaction of the right of action which the breach has given. Under section 55 of the Indian Contract Act to do so without protest precludes any ritht of action for the late delivery. On the 10th of August 1949, the represen tative of the P. & S.D. went to the firm and took delivery of 4,571 flags, presumably without protest. Not only that, but after taking delivery, 483 flags out of that number were supplied to the Collector of Nasik apparently before informing the firm as to how the supply of the flags would be treated by Government, that is to say, whether as a breach of contract or acceptance under protest. Similarly, it is not made quite clear whether the Chief Secretary clearly explained to Mr. DeSouza the express terms upon which the the flags were retained by Government. The only point which can, therefore, be made against Government is that the acceptance of the supply without protest and without explaining the terms upon which the acceptance was made and the disposal of 506 flags out of that supply should be construed as an act inconsistent with the ownership of the seller and the appropriation of the goods towards the contract within the meaning of section 23 of the Indian Sale of Goods Act. On the other hand it can be contended in favour of Government that the position was explained immediately by the Chief Secretary to Mr. DeSouza,

and it is out of sympathy towards the firm and with a view to mitigate the loss to them that the Chief Secretary agreed to help the firm by trying to dispose of the flags by sale ghrough Government Grain Shops etc. and that, therefore, there was no appropriation of the goods towards the contract. The accompanying draft letter may be addressed to the firm, and its reaction awaited

Sd/- (P.M.L)
Remembrancer of Legal Affairs.
U.R. to P. & S.D. No. 11473, dated the
14th October 1949.

C.G.R. 5-6-

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